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16 Attorneys for Plaintiff and Counter-Defendant
17 ALL NIPPON AIRWAYS COMPANY, LTD.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 ALL NIPPON AIRWAYS COMPANY,)
21 LTD.,)
22 Plaintiff,)

23 vs.

24 UNITED AIR LINES, INC.,)
25 Defendant.)

26 AND RELATED COUNTER-CLAIM

Case No. C07-03422 EDL

**DECLARATION OF MARSHALL
S. TURNER IN SUPPORT OF
ALL NIPPON AIRWAYS
COMPANY, LTD.'S MOTION
FOR PROTECTIVE ORDER**

Hearing Date: December 18, 2007
Hearing Time: 9:00 a.m.
Hearing Place: Courtroom of Hon.
Elizabeth D. Laporte

DECLARATION OF MARSHALL S. TURNER

Marshall S. Turner, being duly sworn, deposes and says:

1. I am an attorney and a member of the law firm of Condon & Forsyth LLP, attorneys for Plaintiff and and Counter-Defendant All Nippon Airways Co., Ltd. ("ANA") in the above-captioned matter. I make this declaration in support of ANA's Motion for Protective Order.

2. On September 27, 2007, UAL served ANA with deposition notices and document requests for the three ANA pilots on board Flight NH007 at the time of

1 the Accident as well as a "Person Most Knowledgeable" (hereinafter referred to as
2 "PMK") concerning the Standard Ground Handling Agreement ("SGHA")
3 pursuant to FRCP 30(b)(6). Attached hereto as Exhibit A is a true and correct
4 copy of the deposition notice.

5 3. In my letter of August 30, 2007, I advised UAL that the SGHA referred to
6 in and attached to United's Counter-Complaint could not possibly have anything to
7 do with any issue in this case, and that ANA would not produce a witness on this
8 subject until UAL establishes some basis for its allegations concerning the SGHA
9 documents that were attached to its Counter-Complaint ("1991 SGHA"). Attached
10 hereto as Exhibit B is a true and correct copy of my August 30, 2007 letter. UAL
11 provided no response to my letter of August 30, 2007.

12 4. I participated with UAL's counsel in a telephonic Rule 26(f) conference on
13 September 10, 2007, during which UAL requested a deposition of a witness with
14 knowledge of the 1991 SGHA. I advised UAL's counsel that ANA would not
15 agree to production of such a witness unless UAL would explain the relevance of
16 the 1991 SGHA their pleadings were based upon to the 2003 Accident.

17 5. I again advised UAL's counsel in my letter of September 14, 2007 that no
18 witness would be provided concerning the SGHA without an explanation of the
19 relevance of the 1991 SGHA and why any question regarding the 1991 SGHA
20 could not be answered through interrogatories or admissions. Attached hereto as
21 Exhibit C is a true and correct copy of my September 14, 2007 letter. UAL offered
22 no explanation in response to this request.

23 6. In my letter of September 28, 2007, I clearly explained that the 1991
24 SGHA attached to UAL's Counter-Complaint was outdated on its face and could
25 not possibly apply to the Accident in 2003. Attached hereto as Exhibit D is a true
26 and correct copy of my September 28, 2007 letter. I advised that UAL's Counter-
27 Complaint relies upon the SGHA Main Agreement and Annex A signed by United
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1 on July 23, 1991 and by ANA on August 14, 1991, while the Annex B attached
2 thereto and dated September 25, 2001 plainly states, "the terms of the Main
3 Agreement and Annex A of the SGHA of April 1998. . . shall apply as if such
4 terms were repeated here in full." See UAL Counter-Complaint, Exhibit 1, Annex
5 B, page 1 PREAMBLE.

6 7. Also in my letter of September 28, 2007 I informed UAL that the Annex B
7 attached to UAL's Counter-Complaint in Exhibit 1 was also outdated and would
8 not have been applicable at the time of the Accident. Annex B.1.2 attached to
9 UAL's Counter-Complaint as Exhibit 1 "is valid from: 25 September 2001" and
10 was replaced by Annex B.1.3 dated 25 September 2002, which was the agreement
11 in effect on October 7, 2003 at the time of the Accident. Copies of the correct
12 documents ("2002 SGHA") were provided along with my September 28, 2007
13 letter. See Exhibit D attached hereto.

14 8. I further explained that UAL's Ramp Controller's negligence was his
15 premature release of UAL Flight UA809 which was not "connected to" and did not
16 "arise" out of any service provided to ANA under the SGHA. See Exhibit D
17 annexed hereto.

18 9. In my September 28, 2007 letter, I also invited UAL to come forward with
19 any information contrary to ANA's position and to amend its Answer and Counter-
20 Complaint to delete Counts Three and Four which were based upon the
21 indisputably wrong SGHA.

22 10. UAL never responded to my September 28, 2007 letter, but has filed a First
23 Amended Counter-Complaint without moving for leave of the Court to do so.

24 11. Pursuant to FRCP 37 and L.R. 37-1, I made a good faith attempt to confer
25 with UAL's counsel to resolve this issue without court action. In my letter of
26 November 8, 2007, I requested that UAL have a good faith conference with me.
27 Attached hereto as Exhibit E is a true and correct copy of my November 8, 2007
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1 letter. On November 9, 2007, I participated in a teleconference with UAL's
 2 counsel, during which UAL's counsel advised that UAL would not withdraw its
 3 request for a deposition of the ANA witness with knowledge of the SGHA.

4 12. UAL's First Amended Counter-Complaint relies upon the correct 2002
 5 SGHA that was in effect on the date of the Accident.

6 13. UAL has now recrafted its argument to rest entirely upon its own definition
 7 of the term "marshalling" which is a service to be provided under Section 6.1.1 of
 8 the 2002 SGHA, but provides no factual or legal basis to assert that the damages
 9 are "connected with" or "arise out of" any marshalling service.

10 14. Aircraft "marshalling" is a function of an individual on the ground guiding
 11 an aircraft with visual signals. See Federal Aviation Administration ("FAA")
 12 Aeronautical Information Manual Section 4-3-25, a true and correct copy of which
 13 is annexed hereto as Exhibit F; ASIC GLOSSARY OF TERMS AND DEFINITIONS, a
 14 true and correct copy of which is annexed hereto as Exhibit G; NATO GLOSSARY
 15 OF TERMS AND DEFINITIONS, a true and correct copy of which is annexed hereto as
 16 Exhibit H; and UAL's "Ramp Services Trainer Aircraft Guideperson &
 17 Wingwalker," a true and correct copy of which is annexed hereto as Exhibit I.

18 15. UAL's own training manual uses "Marshall" and "guideperson"
 19 synonymously and establishes that a "guideperson" is someone on the ground
 20 visually directing the aircraft. See Exhibit I.

21 16. Pursuant to agreements unrelated to any SGHA, UAL's Ramp Controller
 22 was performing FAA functions that had nothing to do with "marshalling" under
 23 the SGHA.

24 17. In a Memorandum of Understanding between the FAA and San Francisco
 25 Terminal Equipment Co. ("SFOTEC"), the FAA delegated responsibility for the
 26 operation of Ramp Tower G at San Francisco International Airport ("SFO") to
 27 SFOTEC. In this agreement, the FAA delegated responsibilities for directing
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1 aircraft in the area around Terminal G to SFOTEC. Attached hereto as Exhibit J is
2 a true and correct copy of the Memorandum of Understanding between the FAA
3 and SFOTEC.

4 18. In a Memorandum of Understanding between SFOTEC and UAL,
5 SFOTEC delegated its FAA responsibility for the operation of Ramp Tower G at
6 San Francisco International Airport to UAL. Attached hereto as Exhibit K is a true
7 and correct copy of the Memorandum of Understanding between SFOTEC and
8 UAL.

9 19. In UAL's Declaration of Scott Torpey in Support of UAL's Motion to
10 Compel, paragraph 7, it is stated that it is necessary to depose an ANA Person
11 Most Knowledgeable on the issue of SGHA, but no reason or relevance is
12 explained. The SGHA is a form used by almost all international airlines and the
13 specific SGHA was prepared by UAL as "United contract No. 108536-17" and was
14 signed by UAL and ANA in 2002. See Annex B attached hereto in Exhibit D.

15 20. The Ramp Controller is a UAL employee under the control of UAL. The
16 agreement giving UAL control of the Ramp Tower G was signed by a UAL
17 General Manager. See Exhibit K. UAL fails to identify any area of relevant
18 inquiry that could be supplied by an ANA witness knowledgeable about the
19 SGHA.

20 21. UAL fails to indicate what light an ANA PMK might shed on UAL's claim
21 that its Ramp Controller provided a marshalling service or any other service under
22 the SGHA. All negotiations concerning the SGHA in effect at the time of the
23 accident took place via email with the ANA negotiator sitting at his computer in
24 Tokyo and the UAL negotiator sitting at his computer in Illinois. Attached hereto
25 as Exhibit L is a true and correct copy of the email correspondence between ANA
26 and UAL.

27 22. For the reasons set forth in the accompanying Brief, Plaintiff All Nippon
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1 Airways Co., Ltd. respectfully requests that the Court issue a protective order that
2 a deposition and documents may not be had from an ANA witness concerning the
3 SGHA.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed this 9th day of November, 2007, at New York, New York.

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9 Marshall S. Turner
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